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6 Attorneys for Defendants
Countrywide Home Loans, Inc.;
7 Mortgage Electronic Registration Systems, Inc.;
Bank of America, N.A.; and
8 ReconTrust Company, N.A.

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 MARK CASTILLO,

12 Plaintiffs,

13 vs.

14 COUNTRYWIDE HOME LOANS, INC.;
15 MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC.; BANK OF AMERICA, N.A.;
16 RECONTRUST COMPANY, N.A.; and DOES 1
through 100, inclusive,

17 Defendants.
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CV Case No. 10

3538

[Removal from the Superior Court of California,
County of Santa Clara, Case No. 1-10-CV-
176516]

**DEFENDANTS' NOTICE OF REMOVAL
OF CIVIL ACTION PURSUANT TO 28
U.S.C. SECTIONS 1331 AND 1441**

[FEDERAL QUESTION]

Complt. Filed: July 9, 2010

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JUL 11 2010
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E-filing

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REED SMITH LLP
A limited liability partnership formed in the State of Delaware

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT OF THE
NORTHERN DISTRICT OF CALIFORNIA:**

PLEASE TAKE NOTICE that, pursuant to sections 1331, 1441 and 1446 of Title 28 of the United States Code, Defendants Countrywide Home Loans, Inc. ("Countrywide"), Mortgage Electronic Registration Systems, Inc. ("MERS"), Bank of America, N.A. ("BANA") and ReconTrust Company, N.A. ("ReconTrust") (collectively, "Defendants"), hereby remove the action entitled *M. Castillo v. Countrywide Home Loans, Inc., et al.* filed in the Superior Court of California for the County of Santa Clara (Case No. 1-10-cv-176516) (the "Action") to the United States District Court for the Northern District of California. Removal is proper because, as set forth herein, this Court has subject matter jurisdiction over the claims at issue in the Action and the procedural requirements for removal have been satisfied.

I. THIS COURT HAS SUBJECT MATTER JURISDICTION PURSUANT TO 28 U.S.C. SECTIONS 1331 AND 1441

On July 9, 2010, Plaintiff Mark Castillo ("Plaintiff") filed this Action in the Superior Court of California for the County of Santa Clara. In the Complaint, Plaintiff asserts claims against Defendants for violation of the federal Home Ownership Equity Protection Act ("HOEPA"), 15 U.S.C. section 1639(h), the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601 *et seq.*, as well as TILA's implementing regulation, "Regulation Z" arising out of a mortgage loan obtained by Plaintiff and subsequent foreclosure proceedings. *See, e.g.*, Compl. ¶¶ 26, 28. The Complaint also alleges various fraud and other common law claims as well as violations of several California statutes based on the same mortgage loan and foreclosure proceedings. *See, e.g.*, Compl. ¶ 42.

Because this Action arises under federal law that can be ascertained from the face of Plaintiff's Complaint, this Court has original jurisdiction over this Action pursuant to 28 U.S.C. § 1331. Furthermore, this Court has supplemental jurisdiction over all of Plaintiff's other claims, which arise out of the "same case or controversy" pursuant to 28 U.S.C. § 1367(a). Accordingly, the Action may be removed to this Court by Defendants pursuant to 28 U.S.C. § 1441.

II. THE PROCEDURAL REQUIREMENTS FOR REMOVAL ARE SATISFIED

The Complaint and Summons filed in this Action were sent by mail and received by Defendant MERS on July 12, 2010. *See* Declaration of Luke W. Bowman ("Bowman Decl.") ¶ 2. Defendants Countrywide and BANA were personally served on July 28, 2010. *See id.* Defendant ReconTrust has no record of service. *See id.* The documents received by Defendants are attached hereto as **Exhibit A**. This Notice of Removal is therefore timely filed pursuant to 28 U.S.C. § 1446(b) because it was filed within thirty days of the receipt of the Complaint by Defendant MERS.

Furthermore, all other Defendants have joined in this removal, notwithstanding any service-related issues.

The Superior Court of California for the County of Santa Clara is located within the United States District Court for the Northern District of California. Thus, venue is proper in this Court because it is the "district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a).

In compliance with 28 U.S.C. § 1446(d), Defendants will serve on Plaintiff and will file with the Clerk of the Superior Court, a "Notice to the Clerk of the Superior Court and To Adverse Parties of Filing of Notice of Removal of Civil Action to Federal Court," attaching a copy of this Notice of Removal.

No previous application has been made for the relief requested herein.

WHEREFORE, Defendants remove this action from the Superior Court of California for the County of Santa Clara to this Court pursuant to 28 U.S.C. § 1441.

DATED: August 11, 2010

REED SMITH LLP

By



Luke W. Bowman
Attorneys for Defendants
Countywide Home Loans, Inc.;
Mortgage Electronic Registration Systems, Inc.;
Bank of America, N.A.; and
ReconTrust Company, N.A.

REED SMITH LLP
A limited liability partnership formed in the State of Delaware

EXHIBIT A

SUMMONS (CITACION JUDICIAL)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

COUNTRYWIDE HOME LOANS, INC.
SEE ATTACHED AS EXHIBIT 1

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

MARK CASTILLO

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

2010 JUL -9 D 1:39

D. Wendel

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no pueda pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desachar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): SUPERIOR COURT OF CALIFORNIA

191 N. FIRST STREET

SAN JOSE, CALIFORNIA 95113

CASE NUMBER:

(Número del caso)

110CV176516

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

MARK CASTILLO, 681 Alexandra Court, San Jose, California 95125 (408) 594-1338

DATE: JUL - 9 2010 DAVID H. YAMASAKI

(Fecha)

Chief Executive Officer, Clerk

Clerk, by

(Secretario)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
- ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
- ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
- ☐ other (specify):

4. ☐ by personal delivery on (date):

Page 1 of 1

EXHIBIT 1

**MORTGAGE ELECTRONIC REGISTRATION SYSTEMS,
BANK OF AMERICA, N.A.
RECON TRUST COMPANY, N.A.
and DOES 1 through 100 Inclusive**

ENFORCED

2010 JUL -9 P 1:39

DEPT. OF THE CLERK OF THE SUPERIOR COURT
COUNTY OF SANTA CLARA

D. Wendel

1 MARK CASTILLO
2 681 Alexandra Court
3 San Jose, California 95125
4 Telephone: (408) 594-3138

5 Plaintiff in Pro Per

6
7 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF SANTA CLARA
9

10 [UNLIMITED JURISDICTION]

11 MARK CASTILLO,

12 Plaintiff,

13 Vs.

14 COUNTRYWIDE HOME LOANS, INC.,
15 MORTGAGE ELECTRONIC
16 REGISTRATION SYSTEMS, BANK OF
17 AMERICA, N.A., AND RECON TRUST
18 COMPANY, N.A. *pm*

19 and DOES 1 through 100, inclusive
20 Defendants.
21
22
23

Case No.: 110CV176516
Verified Complaint for Damages for:

1. Predatory Lending Practices;
2. Conspiracy;
3. Aiding and Abetting;
4. Intentional Misrepresentation/
Deceit(Fraud);
5. Intentional violation of Statutes (Cal C.C.
1916.7, 1920, 1921 and Cal Corp. Code
191);
6. Demand for Accounting;
7. Unfair Business Practices (Cal Corp.
Code 10130; 17200; 17500)
8. Breach of Implied Warranty of Good
Faith and Fair Dealing;
9. Declaratory Relief;
10. Quiet Title; and
11. Injunctive Relief.

24 DEMAND FOR JURY TRIAL

25 COMES NOW plaintiff, MARK CASTILLO, and alleges and pleads as follows:
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VERIFIED COMPLAINT
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4. Plaintiffs is informed and believes and based on upon such information and belief thereon allege that the defendant BANK OF AMERICA, N.A. (herein referred to as "BOFA") is and at all times mentioned as a corporation, organized and existing pursuant to the law of the state of California in the County of Santa Clara, state of California.

1 5. Plaintiff is informed and believes and based on upon such information and belief
2 thereon allege that the defendant RECON TRUST COMPANY, N.A., (herein referred to as
3 "RECON") is and at all times mentioned as a corporation, organized and existing pursuant to the
4 law of the state of California in the County of Santa Clara, state of California.

5
6 6. The true names and capacities, whether individual, corporate, associate or otherwise
7 of defendants named herein as DOES 1 through 100 Inclusive, are unknown to plaintiff, who
8 therefore, sues said defendants by such names by such fictitious names. Plaintiff will amend this
9 complaint when same has been ascertained. Plaintiff is informed and believes and based upon such
10 information and belief thereon alleges that all defendants sued herein as DOES are in some manner responsible
11 for the acts herein alleged.

12
13 7. At all times herein mentioned, plaintiff is informed and believes and based upon such
14 information and belief thereon alleges that defendants, and each of them, were agents, employees and or
15 servants of each other were acting within the course and scope of said agency, employment or service and with
16 the permission and consent of each other defendants.

17
18 8. Venue is proper in this court because the subject property is located within this judicial district
19 commonly known as 681 Alexandra Court, San Jose, California 95125.

20
21 9. Defendant COUNTRYWIDE is a lender engaged in making and selling risky loans during the
22 last several years when the obligations giving rise to Plaintiff's complaint were incurred.

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VERIFIED COMPLAINT

11. In or about May, 2006, Plaintiff was solicited by said Defendants and offered to refinance his residential real property located at 681 Alexandra Court, San Jose, California 95125. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned COUNTRYWIDE's Real Estate Sales broker was an agent for defendants, and each of them, and was acting within the course and scope of that agency.

III

III.

1 13. At no time prior to and at time of executing the Subject Loan documentation did defendant
2 provide Plaintiff with any explanation or clarification of the Security Documents and/or other required
3 disclosures for him to read and review, despite Plaintiff's lack of English proficiency. Further, Plaintiff was
4 intentionally denied the opportunity to seek legal advice without a copy of the "Loan Docs".
5

6 14. Plaintiff is informed and believes and thereon alleges that said Defendants, and each of them, had
7 a conflict of interest in that said broker was paid a "yield spread premium" fee (YSP fee") to encourage and
8 steer Plaintiff into a higher rate loan, which was not the loan Plaintiff had initially wished to undertake. The
9 broker was paid the "YSP" fee tied to the amount by which the interest rate on the loan was greater than the
10 then prevailing rate. This conflict of interest and payment was concealed from Plaintiff at the time the loan was
11 made.
12

13 15. At the time of solicitation and offer, COUNTRYWIDE assured Plaintiff that the amount of the
14 proposed Subject Loan would not exceed \$529,000.00. After loan closing, it was discovered that Plaintiff was
15 clearly, willfully, and intentionally misled and deceived by said broker and Defendants, and each of them.
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VERIFIED COMPLAINT

1 16. Plaintiff is informed and believes and thereon alleges that defendant used related fraudulent
2 appraisers to give a real estate appraisal that would justify the large loan that was made to Plaintiff. Although
3 fraudulent said appraisers, who were acting as agents, servants, or employees of said Defendants represented
4 one value of what the Subject Property was worth, when said Defendants knew the actual value was far less.
5 As a result, said defendant intentionally made a loan to Plaintiff that was in excess of the value of the Subject
6 Property. Plaintiff has lost all equity in the Subject Property due to aforesaid deceitful loan transaction and
7 agreement with defendants, and each of them, which was and is void ab initio, by operation of law, which
8 is upon loan alleged herein, including, but not limited to, defendant's violation of disclosure
9 requirements, its violation of its duty to refrain from making misleading statements and
10 fraudulent misrepresentation, and its engaging in predatory lending practices.
11

12
13 17. By reason of the willfully, intentionally, and clearly illegal lending practices of defendant, each of
14 them, Plaintiff was wrongfully and unlawfully induced to refinance the Subject Property and execute the
15 Subject Loan and Security Documents. As a result thereof the Subject Loan and Security Documents were
16 tainted as they had been produced by the wrongful, intentionally, deceptive, and illegal tactics and activities of
17 defendants, and each of them.
18

19 18. Plaintiff was willfully and intentionally misled and deceived by the deceptive
20 conspiratorial acts, conduct, and misrepresentations of Defendant BOFA who falsely induced
21 Plaintiff into believing that said Defendants were assisting Plaintiff with receiving a reasonable
22 and fair "Loan Modification" agreement of Plaintiff's loan. When said false representations were
23 made, Defendant BOFA, acting as the agent /representative of each and all other defendants,
24 knew said statements were untrue and no Loan Modification was being processed or produced on
25 behalf of Plaintiff.
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1 19. In or about September, 2009, Defendants, and each of them, had instead deceptively
2 planned, schemed and conspired to mislead and deceive Plaintiff by not qualifying or attempting
3 to qualify Plaintiff for a "Loan Modification" agreement in violation of California Civil Code
4 Sections 2923.52 and 2923.53.

5 20. As a result of the non-payment of the Subject Loan, defendant BOFA demanded a non-judicial
6 foreclosure proceeding against Plaintiff without complying with California Civil Code Section 2923.5, et seq.
7 Defendants, and each of them, did not offer to decrease Plaintiff's principle balance to the fair market value, in
8 clear violation of California Civil Code Section 2923.5(D).

9
10 21. Plaintiff has attempted in good faith to work out a resolution with defendants, and each of them,
11 but defendants do not appear to have authority to resolve the matter, and it has otherwise failed and refused to
12 make any good faith effort to attempt to resolve the matter with Plaintiff.

13
14 22. Said Defendants, have demanded an non-judicial foreclosure sale clearly without
15 statutory authority and in violation of California law which prohibits defendants, and each of
16 them, from conducting a "Trustee's Sale" in California under California Civil Code 2923.5,
17 which requires defendant BOFA to seek a Loan Modification on behalf of Plaintiff or to
18 "modify" the terms of the Subject Loan prior to defendants, and each of them, authorizing or
19 demanding any Trustee's Sale in compliance with Cal CC 2923.5 and 2924, et seq.

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23. The aforementioned conduct of defendants, and each of them, was an intentional false representation, deceit, and/or concealment of material facts known to Defendants, and each of them, with the intention on the part of said defendants, and each of them, of depriving Plaintiff of his statutory right to protect his property, legal rights, or otherwise causing injury, and said acts, conduct and false representations, were clearly despicable as it subjected Plaintiff to great and unjust hardship in conscious disregard of Plaintiff's rights.

24. The allegations of this complaint stated on information and belief are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery during the tendency of the action herein.

FIRST CAUSE OF ACTION
AGAINST ALL DEFENDANTS
(Predatory Lending Practices)

25. Plaintiff repeat, re-allege and incorporates by this reference all allegations made hereunder as though fully set forth herein.

26. Plaintiff is informed and believes and thereon alleges that defendants, each of them, did engage and have engaged in predatory lending practices in violation of Federal Home Ownership Equity Protection Act ("HOEPA"), 15 U.S.C. 1637, the Truth in Lending Act ("TILA") 1601; Federal Regulation Z, 12 C.F.R. 22, California Civil Code Section 1632, and California Business and Professions Code 17500, the specifics of which are unknown and subject to discovery.

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VERIFIED COMPLAINT
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1 27. Plaintiff is informed and believes and thereon alleges that defendant
 2 COUNTRYWIDE failed to verify Plaintiff's ability to repay the Subject Loan that it wrote, and
 3 said Defendants manufactured facts and figures that would show the Plaintiff had the ability to
 4 repay the Subject Loan. Further said Defendant misled and deceived Plaintiff as to the terms and
 5 conditions of the said Loan, by failing to fully disclose the terms and conditions of said Loan
 6 which Plaintiff should have known in order to make an informed decision about his ability to
 7 make the payment required. Said Defendant engaged in unlawful actions to justify their own
 8 rapacious appetite for fee income that was generated by the sale of Loans written to Plaintiff and
 9 other similarly situated persons/clients.
 10

11 28. Plaintiff alleges on information and belief that said defendants violated 15 U.S.C.
 12 1639(h) in making loans by lowering their underwriting standards in order to write loans to
 13 minority borrowers that were otherwise either financially unacceptable or unduly burdensome
 14 and would clearly subject Plaintiff and other similarly to a high risk of losing their Property by
 15 reason of Foreclosure.
 16

17 29. Plaintiff alleges that defendants' obvious predatory lending practices make the
 18 Security Documents for the Loan herein subject to rescission and justifies a judgment for
 19 compensatory damages in an amount to be determined at trial.
 20

21 **SECOND CAUSE OF ACTION**

22 **AGAINST ALL DEFENDANTS**

23 **(Conspiracy)**

24 30. Plaintiff repeats, re-alleges and incorporates by reference all preceding paragraphs
 25 as though fully set forth herein.
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28 **VERIFIED COMPLAINT**

1 31. Commencing at the inception of the execution of the original loan with Defendants
2 COUNTRYWIDE, and MERS conceived, designed and executed a plan, scheme and agreement
3 to deceive and deprive Plaintiff of his statutory rights to protect his property from unexpected
4 foreclosure.

5 32. Said Defendants in concert with Defendants BOFA and RECON planned, schemed,
6 designed and illegally conspired to "steal" Plaintiff's property ("subject property") by, without
7 proper statutorily mandated required Loan Docs, Loan Modification, and subsequent notices,
8 thereby conduct an illegal, unnoticed Trustee's Sale in violation of Cal CC 2923, et seq. and
9 2924 c-g, inclusive.
10

11 33. Defendants COUNTRYWIDE, MERS, BOFA and RECON are extremely
12 experienced predatory lenders/ investors and "foreclosure trustees," who knew or clearly should
13 have known of the "title history" of subject property and none of said Defendants should have
14 reasonably participated in the foreclosure proceedings concerning subject property, their "clearly
15 conspiratorial agreement" to "steal" subject property from Plaintiff by ordering an illegal
16 Trustee's Sale.
17

18 34. As a direct and proximate result of the aforesaid deceptive, willful outrageous and
19 illegal acts, conduct and false conspiratorial misrepresentations of Defendants, and each of them,
20 Plaintiff has suffered harm and injury and damages in an amount unascertainable at this time, to
21 be proven at trial.
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1 35. As a further direct and proximate result of the conspiratorial willful, intentional
 2 outrageous, oppressive, acts and conduct and false representations, of said defendants and each of
 3 them, which are clearly done with malice toward Plaintiff as specifically defined in Cal CC 3294
 4 and Plaintiff's therefore, entitled to an award of punitive and/or exemplary damages against
 5 Defendants, and each of them.
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 8 **THIRD CAUSE OF ACTION**
 9 **AGAINST ALL DEFENDANTS**
 10 **(Aiding and Abetting)**
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 13 36. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
 14 fully set forth herein.

15 37. Plaintiff repeats, re-alleges and incorporates by reference all preceding paragraphs
 16 as though fully set forth herein.
 17

18 a. Aiding and Abetting under California tort law requires:

- 19 (1) Actual knowledge of a party's fraudulent acts, and (2) Providing substantial
 20 assistance to the party actually committing the fraud. *In re: First Alliance*
 21 *Mortgage Co.*, 471 F.3d 977, 995 (9th Cir. 2006). Further, ordinary business
 22 transactions a bank performs for a customer can satisfy the substantial assistance
 23 element of an aiding and abetting claim if the bank actually knew those
 24 transaction were assisting the customer in committing a specific tort. *Id.*
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1 b. Defendants BOFA and RECON aided and abetted Defendant's COUNTRYWIDE and
2 MERS in said Defendants fraudulent scheme to enable Defendant MERS to do business
3 and illegally act as a lending institution in violation of California law.

4 38. Plaintiff is informed and believes and therein alleges that it is abundantly clear that
5 Defendants BOFA and RECON, highly experienced knowledgeable professional real estate party
6 who is extremely active, as "daily" sellers and buyers of real property at Trustee's sales, certainly
7 knew of the illegal complicated scheme and practices of Defendants COUNTRYWIDE,
8 "purported lender" and "MERS" purported beneficiary, (therefore "actual lender) and the fact
9 that MERS, at all times herein, could not conduct business in California, and is "barred" from
10 conducting business a "lending institution" under California Code Section 191. All said
11 Defendants and each of them, therefore aided and abetted said fraudulent scheme as alleged
12 herein.
13

14
15 39. As a direct and proximate result of the aforesaid willful, wrongful, illegal and
16 oppressive acts and conduct and false representation of said Defendants and each of them aiding
17 and abetting said fraudulent scheme, Plaintiff has suffered damages in an amount currently
18 unascertained, to be proven at trial.
19

20 40. As a further direct and proximate result of the willful and intentional illegal acts,
21 conduct and false representations of Defendants, and each of the them while acting deceptively,
22 in concert as alleged hereinabove, by aiding and abetting each other to oppress and despicably
23 harm and injure Plaintiff, done with malice toward Plaintiff as defined in Cal CC 3294 thereby
24 entitling Plaintiff to and award of punitive/exemplary damages against said defendants, and each
25 of them.
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FOURTH CAUSE OF ACTION

AGAINST ALL DEFENDANTS

(Intentional Misrepresentation/Deceit (Fraud))

41. Plaintiff repeats, re-alleges, and incorporates by reference each and every allegation made hereinabove, as though fully set forth herein.

42. Plaintiff is informed and believes and thereon alleges that Defendant COUNTRYWIDE failed to verify Plaintiff's ability to repay the Subject Loan that it wrote manufactured facts and figures that would show the Plaintiff had the ability to repay the Subject Loan, misled Plaintiff as to the terms and conditions of the Subject Loan, failed to fully disclose the terms and conditions of the Subject Loan that Plaintiff should have known to be able to make an informed decision about his ability to make the payment required, and engaged in unlawful actions to justify their own rapacious appetite for fee income that was generated by the sale of Loans written to Plaintiff and other similarly situated.

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VERIFIED COMPLAINT

1 43. Defendant COUNTRYWIDE lowered its own underwriting standards in order to
2 provide Plaintiff with a loan that was and is financially unbearable and burdensome and place
3 Plaintiff in a position where it was likely that he would default on those loan and lose the
4 investment that he made. Defendants, and each of them, did this to be able to later foreclose on
5 the Plaintiff, take his property, and repeat the same fraud, and unfair and unlawful business
6 practice again to unwitting borrowers. Plaintiff was justified in relying on the expertise of
7 Defendant, and each of them, in that it held itself out as being capable of determining the loan
8 size and terms that plaintiff would be able to manage without undue risk of loss. Defendants, and
9 each of them, violated California Business Professions Code 17500 by making untrue and
10 misleading statements about the terms of the Subject Loan.
11

12
13 44. As a direct and proximate result of the despicable and outrageous acts and
14 misconduct of Defendants, and each of them, Plaintiff has suffered and continues to suffer
15 damages in an amount to be proven at trial.
16

17 45. As a further direct and proximate result of the aforesaid willful, intentional,
18 outrageous, despicable acts and misconduct, and deception of Defendants, and each of them,
19 Plaintiff is entitled to an award of punitive and/or exemplary damages.
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28 VERIFIED COMPLAINT

FIFTH CAUSE OF ACTION

AGAINST ALL DEFENDANTS

**(Intentional Violation of Statutes, CC §§1916.7, 1920, and 1921; and California
Corporation Code § 191)**

46. Plaintiff repeats, re-alleges, and incorporates by reference, each and every
allegations made hereinabove, as though fully set forth herein.

47. Defendants, and each of them, entered into an illegal pooling agreement in
express violation of California C.C. §§1916.7, 1920, and 1921, and as a direct and proximate
result therefore, failed to satisfy the requirements of an adjustable mortgage instrument as set
forth in California C.C. §1920, and the requirements for disclosure of information and
connections with a mortgage instrument, as set forth, required by California C.C. §1921.

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VERIFIED COMPLAINT

1 48. On or about May 24, 2006 Plaintiff executed a Deed of Trust which deceptively and
 2 illegally named Defendant, MERS, as the actual beneficiary on the Subject Loan to Plaintiff. This
 3 deception was necessary because MERS, the real lender on the loan could not legally act as a
 4 lending institution in California pursuant to the restrictions invoked under California Corporation
 5 Code Section 191, and therefore Defendant MERS had no legal enforceable authority to act as a
 6 foreclosing beneficiary on any Deed of Trust in California, without an assignment of interest.
 7 However, MERS unlawfully and outrageously ordered the filing of a notice to Default and
 8 Election to Sell Under Deed of Trust on Subject Property (See herein incorporated Exhibit "B").
 9 Said Deed of Trust is void ab initio by operation of law, pursuant to Cal. Corporation Code
 10 Section 191, as Defendants MERS cannot authorize or request a Foreclosure Sale under Cal law
 11 as the foreclosing beneficiary. As a direct and proximate result of the aforesaid willful,
 12 intentional, deliberate acts and misconduct of Defendants, and each of them, Plaintiff has been
 13 generally damaged in an amount to be proven at trial.

14 49. As a further direct and proximate result of the willful, intentional, deliberate acts
 15 and misconduct of Defendants, and each of them, in violation of aforesaid statutes, done with
 16 obvious malice to Plaintiff, said Defendants have injured and harmed Plaintiff by their despicable
 17 act and Plaintiff is therefore entitled to an award of punitive and/or exemplary damages in an
 18 amount to be proven at trial.

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28
VERIFIED COMPLAINT

SIXTH CAUSE OF ACTION

AGAINST ALL DEFENDANTS

(Demand for Accounting)

50. Plaintiff repeats, re-alleges, and incorporates by reference all preceding paragraphs as though fully set forth herein.

51. The true amount of money, if any, owed to Defendants by Plaintiff is unknown as Defendants allege different figures for the payoff of the loan that Plaintiff contends is owed. Prior to filing this action, Plaintiff requested copies of the entire file from Defendants pursuant to Section 12 USC 2605(e) of the Real Estate Settlement and Procedures Act (RESPA). Defendants have unlawfully and outrageously failed and refused to respond to said request and have therefore violated the provisions of said section and therefore committed an unlawful and unfair business practice act.

52. Defendants have alleged, on different occasions what Plaintiffs owes Defendants on the subject loan. What Plaintiff owes to the ultimate true note holder on the subject property, pursuant to Uniform Commercial Code (UCC) Section 3301, if anything, cannot be determined without an accounting. Accordingly, Plaintiffs seek an accounting from Defendants and the true note holder so that if any money is due and payable to Defendants the true amount can factually be determined and Plaintiffs can then be in a position to tender the true sums due to the factual note holder.

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VERIFIED COMPLAINT

SEVENTH CAUSE OF ACTION

AGAINST ALL DEFENDANTS

(Unfair Business Practices)

53. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

54. California Business and Professions Code Section 17200 prohibit any unlawful, unfair or fraudulent business acts or practice and unfair, deceptive, untrue or misleading advertising and any acts prohibited by Business and Professions Code Section 17500, et seq.

55. California Business and Professions Code Section 17500, et seq. specifically prohibits the making of a statement or production of a publication or declaration concerning any circumstances or matter of fact connected with the proposed performance of acts resulting in the disposition of real or personal property, with reasonable care should be known, to be untrue or misleading and therefore deceptive.

56. Defendants, and each of them, have committed acts of unfair business practices defined by California Business and Professions Code Section 17200, et seq. by engaging in acts the Truth in Lending Act, using bait and switch tactics; making loans without providing borrowers with sufficient, accurate and understandable information regarding the terms and conditions of the loan; and making loans without providing borrowers with sufficient, accurate and understandable information regarding the nature and extent of the financial risk being assumed by the borrowers.

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1 57. The acts all as alleged above violate California Business and Professions Code
2 Section 17200, et seq. in the manner alleged above, and based on information and belief, in the
3 following further respects: the conduct of Defendants, and each of them, threatens an incipient
4 violation of various consumer protection statutes, or which violate the policy or spirit of such
5 laws including, but not limited to, California Business and Professions Code Sections 10130 and
6 Title 15 of the United States Codes, together with Regulation Z 12 C.F.R. 226.1
7

8 58. As a direct and proximate result of the aforesaid willful, oppressive acts and
9 conduct and false representations of said Defendants, and each of them (Plaintiff has incurred
10 and continues to incur damages, in an amount unascertained, to be proven at trial.
11

12
13 **EIGHTH CAUSE OF ACTION**

14 **AGAINST ALL DEFENDANTS**

15 **(Breach of Implied Warranty of Good Faith and Fair Dealing)**

16 59. Plaintiff repeats, re-alleges and incorporates by reference, Paragraphs 1
17 through 56, inclusive, as though set forth at length herein.
18

19 60. In conscious disregard of plaintiff's contractual rights said Defendants
20 have intentionally subjected plaintiff to cruel and unjust hardship as repeatedly
21 alleged hereinabove. Plaintiff is therefore entitled to recover an award of
22 compensatory damages.
23

24 61. As alleged hereinabove, Defendants, each of them, virtually from the inception of
25 the agreement misled, deceived and willfully and intentionally breached the implied covenant of
26 covenant of good faith and fair dealing due and owing to plaintiff under California law.
27

28 **VERIFIED COMPLAINT**

62. The aforesaid willful, wrongful, deceitful false and illegal representations and oppressive tactics, acts and conduct by Defendants, and each of them, constituted a breach of the implied warranty of good faith and were done to harm and injure Plaintiff and deceptively "steal" Plaintiff's residential real property.

63. As a direct and proximate result of the aforementioned wrongful acts and conduct and false representations of Defendants, and each of them, Plaintiff has and will suffered damages in an amount to be proven at trial.

64. As a further direct and proximate result of the aforementioned intentional, illegal acts and conduct and false representations of Defendants, and each of them, which were oppressive, outrageous and done with malice toward Plaintiff as specifically defined in Cal CC 3294, Plaintiff is entitled to an award of punitive and/or exemplary damages.

65. The actions of said defendant, as hereinbefore described violation of said implied covenant of good faith and fair dealing have caused the plaintiff to suffer damages to be proven at the time of trial.

NINTH CAUSE OF ACTION
AGAINST ALL DEFENDANTS
(Declaratory Relief)

66. Plaintiff repeats and re-alleges all paragraphs as made hereinabove as though fully set forth herein.

67. Plaintiff alleges that an actual controversy exist as to the following issues.

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III

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III

1 68. Plaintiff contends that the Subject Loan and Security Documents made between
2 Plaintiff and Defendants, and each of them, are void ab initio by operation of law based on the
3 facts alleged herein, including, but not limited to, defendant's violation of disclosure
4 requirements, its violation of its duty to refrain from making misleading statements and
5 fraudulent misrepresentation, and its engaging in predatory lending practices.

6 69. Due to the improper and fraudulent activities of defendants, each of them, it is
7 improper and unjust to enforce the Security Documents through foreclosure to obtain title,
8 wrongfully, to the Subject Property

9 70. Defendants contend that the Subject Loan met contemporary underwriting standards
10 and that it did nothing wrong in proceeding to a non-judicial foreclosure sale of the Subject
11 Property.

12 71. Plaintiff seeks an Order from this Court stating defining, and determining the rights
13 obligations, duties and responsibilities of Plaintiff and Defendants, and each of them, concerning
14 the right to title and possession of subject property.

15
16 **TENTH CAUSE OF ACTION**
17 **AGAINST ALL DEFENDANTS**
18 **(Quiet Title)**

19
20 72. Plaintiff repeats, re-alleges all paragraphs as made hereinabove as though fully set
21 forth herein.

22 73. Plaintiff is the legal owner of the Subject Property. A legal Description of the
23 Subject Property is as follows:

24 SEE ATTACHED AS EXHIBIT "C"

25 ///

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27 ///

28 VERIFIED COMPLAINT
 21

1 74. Plaintiff seeks to quiet title against the claims of defendants, each of them, which
 2 holds itself out as the equitable owner of the Subject Property entitled to bring a non-judicial
 3 foreclosure action, which claim is invalid due to Plaintiff's right of rescission due to the violation
 4 of truth and lending rules and fraudulent acts in connection with the acquisition and creation of
 5 the loan documents for the Subject Loan.

6 75. Plaintiff will tender any liens against the Subject Property to the true factual note
 7 holder.

8 76. Plaintiff alleges that defendant, each of them, have no right to title or interest in the
 9 Subject Property and no right to entertain any right of ownership including demanding of
 10 possession or filing cases for unlawful detainer. Defendants have unclear hands and may not
 11 proceed with any foreclosure action until the results of their fraudulent acts are resolved.

12 77. Plaintiff seeks to quiet title as of July 7, 2010. Plaintiff seeks a judicial declaration
 13 that title to the Subject Property is vested in Plaintiff alone and that defendants, each of them, its
 14 agents and assignees, or any of them, be declared to have no estate, right, title, or interest in the
 15 Subject Property and that said defendants and/or its agents and assignees, be forever enjoined
 16 from asserting any estate, right, title, or interest in the Subject Property.

17 18 **ELEVENTH CAUSE OF ACTION**

19 **AGAINST ALL DEFENDANTS**

20 **(Injunctive Relief)**

21 78. Plaintiff hereby incorporates by reference Paragraphs 1 through 24, Inclusive, of the
 22 GENERAL ALLEGATIONS, and makes them a part of this instant cause of action as though
 23 fully set forth herein.

24 79. By reason of the fraudulent conduct of the defendants, and each of them, there is a
 25 strong likelihood that Plaintiff will prevail on its suit. Plaintiff will seek leave of this court to
 26 prohibit any further actions to interfere with Plaintiff's use and enjoyment of the Subject Property
 27 pending a determination of this instant lawsuit.

28 **VERIFIED COMPLAINT**

1 Wherefore plaintiffs pray for:

2
3 FIRST, SECOND, AND THIRD, FOURTH, AND FIFTH CAUSE OF ACTION:

- 4
- 5 1. For rescission of the subject Loan and Security Documents;
 - 6 2. For compensatory and special damages in an amount to be proven at time of trial;
 - 7 3. Punitive and/or exemplary damages in an amount to be proven at time of trial;
 - 8 4. That the actions of defendants, and each of them, be deemed to be unfair and deceptive
 - 9 business Practices under California law and that defendant and that defendants, and each
 - 10 of them, shall be deemed not to have any interest, legal, or equitable, in the Subject
 - 11 Property described in the complaint.
 - 12

13
14 SIXTH CAUSE OF ACTION:

- 15
- 16 5. An accounting of all payments, credits and notices/communications related to said
 - 17 payments from Defendants.
 - 18 6. An order to produce original loan documents with Plaintiff's original signature.
 - 19

20 SEVENTH CAUSE OF ACTION:

- 21
- 22 7. General damages in an amount to be proven at time of trial;
 - 23 8. Special damages in an amount to be proven at time of trial;
 - 24 9. Punitive and/or exemplary damages in an amount to be proven at time of trial;
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 - 26
 - 27
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1 EIGHTH CAUSE OF ACTION:

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3 10. General damages in an amount to be proven at time of trial;

4 11. Special damages in an amount to be proven at time of trial;

5 12. Punitive and/or exemplary damages in an amount to be proven at time of trial;

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8 NINTH CAUSE OF ACTION:

9 13. For rescission of the subject Loan and Security Documents;

10 14. For compensatory and special damages in an amount to be proven at time of trial;

11 15. Punitive and/or exemplary damages in an amount to be proven at time of trial;

12 16. That the actions of defendants be deemed to be unfair and deceptive business practices
13 under California law and that defendants, and each of them, shall be deemed not to have
14 any interest, legal, or equitable, in the Subject Property described in the complaint.
15
16

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18 TENTH CAUSE OF ACTION:

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20 17. An Order Quieting Title of Subject Property to Plaintiff;
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22 ELEVENTH CAUSE OF ACTION:

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24 18. For a preliminary injunction enjoining defendants, including their agents and assigns,
25 from selling or interfering with Plaintiff's possession of the Subject Property pending
26 resolution of the issues herein.
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1 ALL CAUSES OF ACTION:

2 19. For costs of suit incurred herein;

3 20. For such other and further relief as the Court deems just and proper.
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10 Date: July 8, 2010
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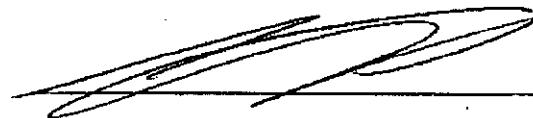
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15 MARK CASTILLO
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VERIFICATION

I, MARK CASTILLO, declare and state as follows:

I am the Plaintiff in the above-entitled matter. I have read the foregoing Complaint and know the contents thereof, and that it is true of my own knowledge, except as to matters, which are stated upon my own information and belief, which we believe to be true.

I declare under penalty of perjury that the foregoing statements are true and correct, executed on July 8, 2010 at San Jose, California.



MARK CASTILLO

VERIFIED COMPLAINT

EXHIBIT "A "

Recording Requested By:
L. HOBURG

DOCUMENT: 18952979

Pages: 27



Fees	87.00
Taxes	
Copies	
AMT PAID	87.00

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.

BRENDA DAVIS
SANTA CLARA COUNTY RECORDER
Recorded at the request of
Recording Service

RDE # 007
5/26/2006
2:04 PM

MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423
Prepared By:
JOAN DEAL

[Space Above This Line For Recording Data]

1930514
[Recrow/Closing #]

00013509158205006
[Doc ID #]

DEED OF TRUST

MIN1000157-0006467103-1

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated MAY 24, 2006, together with all Riders to this document.

(B) "Borrower" is
MARIBEL CASTILLO, AND MARK CASTILLO, WIFE AND HUSBAND AS JOINT TENANTS

CALIFORNIA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Page 1 of 18

VMP-8A(CA) (0207) CHL (08/08)(d) VMP Mortgage Solutions, Inc. (800)521-7291
CONVVA

Form 3005 1/01



* 2 3 9 9 1 *



* 1 3 5 0 9 1 5 8 2 0 0 0 0 1 0 0 6 A *

DOC ID #: 00013509158205006

Borrower's address is

852 DELMAS AVE, SAN JOSE, CA 95125

Borrower is the trustor under this Security Instrument.

(C) "Lender" is

COUNTRYWIDE HOME LOANS, INC.

Lender is a CORPORATION

organized and existing under the laws of NEW YORK

Lender's address is

4500 Park Granada MSN# SVB-314, Calabasas, CA 91302-1613

(D) "Trustee" is

CTC REAL ESTATE SERVICES

400 COUNTRYWIDE WAY MSN SV-88, SIMI VALLEY, CA 93065

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated MAY 24, 2006

The

Note states that Borrower owes Lender

FIVE HUNDRED TWENTY NINE THOUSAND and 00/100

Dollars (U.S. \$ 529,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JUNE 01, 2036

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

<input checked="" type="checkbox"/> Adjustable Rate Rider	<input checked="" type="checkbox"/> Condominium Rider	<input type="checkbox"/> Second Home Rider
<input type="checkbox"/> Balloon Rider	<input type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> 1-4 Family Rider
<input type="checkbox"/> VA Rider	<input type="checkbox"/> Biweekly Payment Rider	<input type="checkbox"/> Other(s) [specify]

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by

PROOF OF SERVICERe: *Castillo v. Countrywide, et al.*

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is REED SMITH LLP, 101 Second Street, Suite 1800, San Francisco, CA 94105-3659. On **August 11, 2010**, I served the following document(s) by the method indicated below:

CIVIL COVER SHEET**DEFENDANTS' NOTICE OF REMOVAL OF CIVIL ACTION PURSUANT TO 28 U.S.C. SECTIONS 1331 AND 1441****DECLARATION OF LUKE W. BOWMAN IN SUPPORT OF DEFENDANTS' NOTICE OF REMOVAL OF CIVIL ACTION PURSUANT TO 28 U.S.C. SECTIONS 1331 AND 1441****DEFENDANTS' CORPORATE DISCLOSURE STATEMENT [FRCP 7.1]****DEFENDANTS' CERTIFICATION OF INTERESTED ENTITIES OR PERSONS [L.R. 3-16]**

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this Declaration.

Mark Castillo
681 Alexandra Court
San Jose, CA 95125
Tel: 408.594.3138
(Plaintiff In Pro Per)

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **August 11, 2010**, at San Francisco, California.

Victoria Fedoroff

US_ACTIVE-104306843.1